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Supreme Court, U.S.
FILED

No. 95 • 522 SEP 5 - 1995

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

GAYLE A. ROY, pro se, PETITIONER

vs.

MERIT SYSTEM PROTECTION BOARD, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI SUPPLIMENTAL APPENDIX

Gayle A. Roy, pro se
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17 pp

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
KENNETH J. MURPHY
CLERK
SEP 27 9:13AM 94

Gayle A. Roy,
Plaintiff,

CASE NO. C-1-94-88

vs.

United States Postal Service, et al.,
Defendants

NOTICE

Attached hereto is the Report and Recommended Decision of the Honorable Robert A. Steinberg, United States Magistrate Judge, which was filed on 27 Sep 1994. Any party may object to the Magistrate Judge's findings, recommendations and report within ten (10) days after being served with a copy thereof or further appeal is waived. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). Such parties shall file with the Clerk of Court, and serve on all parties, the Judge and the Magistrate Judge, a written Motion to Review which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made, along with a memorandum of law setting forth the basis for such objection. (Such parties shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which an objection is made).

In the event a party files a Motion to Review the Magistrate Judge's Findings, Recommendations and Report, all other parties shall respond to said Motion to Review within ten (10) days after being served a copy thereof.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
KENNETH J. MURPHY
Clerk
Sep 27 9:30am 94

Gayle A. Roy,
Plaintiff

vs

Case No. C-1-94-088

United States Postal Service, et al.,
Defendants

REPORT AND RECOMMENDATION

This matter is before the Court on Defendants' motion to dismiss or in the alternative for summary judgment (Doc. 7), *pro se* Plaintiff Gayle A. Roy's response (Doc. 9), and Defendants' reply. (Doc. 10).

Roy began her employment with the United states Postal Service in 1981. In 1985, she was place on total disability due to a knee injury. In February 1989, she returned to work in a limited duty status, for two hours a day. In June 1989, Roy advised a Postal Service medical officer that she was unable to work under limited duty status, due to alleged problems involving her neck, back, shoulder, leg and side. Upon investigation of the matter in June and July 1989, Roy was observed mowing her lawn, walking without a crutch, driving an automobile, carrying, bending, and stooping. Consequently, on August 3, 1989, the Postal Service issued Roy a notice of proposed removal for providing false information to a postal medical officer. (Doc. 7, Ex. 2). Roy filed a grievance and the matter proceeded to arbitration.

In April 1990, Roy was indicted for conduct stemming from her allegedly fraudulent collection of benefits under the Federal Employees Compensation Act. This indictment was dismissed at the government's request. Based on the same conduct, Roy was again indicted in November 1990. This indictment was dismissed under the Speedy Trial Act. Based

on the same conduct, Roy was indicted yet a third time in January 1991.

In February 1991, the arbitrator issued an award requiring Roy to undergo a fitness for duty examination, which would be determinative of whether she should be reinstated. (Doc. 7, Ex. 7, p.8).

In March 1991, a jury convicted Roy on three courts of making false statements in violation of 18 U.S.C. §1001, one court of mail fraud in violation of 18 U.S.C. §§1341 and 1342, and two counts of making false claims in violation of 18 U.S.C. §287. She was sentenced to imprisonment for a term of six months. (Doc. 7, Ex. 3). On appeal, the Sixth Circuit upheld this conviction. (Doc. 7, Ex.4).

On April 11, 1991, the Postal Service issued Roy a notice of proposed removal for unacceptable conduct regarding her March 1991 felony conviction. (Doc. 7, Ex.5). On April 18, 1991, the Postal Service issued Roy a letter of decision, with an April 20, 1991 effective discharge date. (Doc. 7, Ex.6). The letter notified Roy of her right to appeal her removal to the Merit Systems Protection Board within twenty days of the effective date of that decision. Instead, on April 24, 1991, Roy filed a grievance, contending that her discharge was arbitrary, capricious, punitive, without just cause, constituted double jeopardy, and was contrary to the February 1991 arbitration award. (Doc. 7, Ex.7, p.2). On July 28, 1993, her grievance was denied. The arbitrator found that Roy's discharge was based on her criminal conviction rather than on her providing false information to a postal medical officer. Thus, the discharge was not found to constitute double jeopardy. The arbitrator also found just cause to support the discharge. (Doc. 7, Ex. 7).

On August 16, 1993, Roy filed an appeal to the Merit Systems Protection Board (MSPB) regarding her April 20, 1991 discharge. (Doc. 7, Ex.8). In her appeal, Roy contended, among other things, that she was the victim of handicap discrimination and reprisal for whistleblowing and

filing a union grievance. (Id.). In its September 13, 1993 initial decision, the MSPB dismissed Roy's appeal as untimely. (Doc. 7, Ex.9). The administrative judge's decision was based on 5 C.F.R. §1201.22(b)(1993), which provided that the appeal of an agency action to the MSPB must be filed within twenty days of the effective date of the action. (Id., p.1). The administrative judge did not address the merits of Roy's claim. (Id., p.4). Roy's petition for review was denied by the MSPB on January 12, 1994. (Doc. 7, Ex.10). The January 12, 1994 Order advised Roy that she had thirty days to request judicial review of the MSPB decision by the Court of Appeals for the Federal Circuit. (Id.). Instead, on February 7, 1994, Roy filed her complaint with this Court. (Doc.1). She filed an amended complaint on April 7, 1994. (Doc.3).

Roy's amended complaint states that her action is brought pursuant to Title VII under Civil Rights Act of 1964, specifically 29 U.S.C. §2000e-5. (Doc.3, ¶3). She claims discrimination with respect to "reprisal and retaliation for whistleblowing, exercising my union rights and discrimination against the disabled[1] because of an on the job injury." (Doc.3, ¶6). She also claims "violation of civil rights, denial of procedural due process, abuse of power, use of false statement, removal from Workman Comp[ensation] Rolls without due process, [and] not abiding by binding arbitration." (Doc.3, ¶4). Roy has named seventeen individual Defendants: fifteen Postal Service employees; a Workers' Compensation claims examiner; and an Assistant United States Attorney. She seeks back pay, reinstatement, front pay, expenses, and attorneys' fees. She also requests that the case be remanded to the MSPB and the Office of Special Council for a full investigation and to include newly discovered medical evidence from November 1993.

42 U.S.C. §2000e-5 (Title VII) prohibits employment

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[1] In her original complaint, Roy also alleged sex discrimination. She did not include this allegation in her amended complaint. Thus, Roy has not brought a sex discrimination claim.

discrimination on the basis of race, color, religion, sex, or national origin. 42 U.S.C. §2000e-16 prohibits employment discrimination against federal employees on the basis of race, color, religion, sex, or national origin. Discrimination on the basis of handicap is prohibited by 29 U.S.C. §794, which expressly incorporates the remedies, procedures, and rights of 42 U.S.C. §2000e-16. 29 U.S.C. §794a(a)(1). *Smith v. Unites States Postal Service*, 742 F2d 257, 259 (6th Cir. 1984). We interpret Roy's amended complaint at paragraph 6 to allege a claim of handicap discrimination. Whistleblowing and the exercise of union rights are not protected activities under Title VII. *See* 42 U.S.C. §2000e-16. We interpret Roy's amended complaint at paragraph 4 to be a request for judicial review of the January 12, 1994 MSPB order.

Defendants contend that this Court lacks subject matter jurisdiction on Roy's request for judicial review of the MSPB Order. With regard to her discrimination claim, Defendants contend that Roy failed to timely exhaust her administrative remedies and that she failed to name the proper defendant.

THIS COURT LACKS SUBJECT MATTER JURISDICTION ON ROY'S REQUEST FOR JUDICIAL REVIEW OF THE MSPB ORDER

Petitions for judicial review of MSPB actions that do not involve discrimination claims are filed with the Court of Appeals for the Federal Circuit and are reviewed on the administrative record. 5 U.S.C. §7703(b)(1). Where a claim of discrimination is coupled with a nondiscrimination claim, the entire "mixed case" shall be filed with the appropriate District Court. 5 U.S.C. §7703(b); *Romain v. Shear*, 799 F2d 1416, 1420, n.1 (9th Cir. 1986), *cert. denied*, 481 U.S. 1050 (1987); *Ballard v. Tennessee Valley Authority*, 768 F2d 756, 757, n.1 (6th Cir. 1985). This allows for a unitary, rather than bifurcated, judicial review of the MSPB decision. *Ballentine v. Merit Systems Protection Board*, 738 F2d 1244, 1246 (Fed. Cir. 1984). In a mixed case, the plaintiff has the right to a trial *de novo* on the discrimination claim. 5 U.S.C. §7703(c). The

nondiscrimination claim in a mixed case is reviewed on the administrative record. Id.; *Romain*, 799 F2d at 1421. However, when an action is appealed to the MSPB, until the discrimination issue and the appealable action have been decided on the merits by the MSPB, the plaintiff has no right to a trial *de novo* and the proper court to perform judicial review is the Federal Circuit. *Ballentine*, 738 F2d at 1246-47. This process results in a unified body of caselaw on procedural or threshold issues, not related to the merits of discrimination claims, to be decided by the Federal Circuit. Id. at 1247. *See also Synan v. Merit Systems Protection Board*, 765 F2d 1099, 1101-02 (Fed. Cir. 1985); *Wall v. United States*, 871 F2d 1540, 1542-43 (10th Cir. 1989), *cert denied*, 493 U.S. 1019 (1990).

In the present action, the September 1993 MSPB initial decision[2] dismissed Roy's August 1993 appeal to the MSPB as untimely, having been filed more than two years after the effective date of her April 1991 discharge. The MSPB did not rule on either the merits of her discrimination claim or her grievance claim, i.e., whether the discharge constituted double jeopardy or was otherwise improper.

Thus, we find that Roy's request for judicial review of this threshold issue, whether her August 1993 MSPB appeal was timely filed, must be made to the Federal Circuit and that this Court has no subject matter jurisdiction over that issue. *See Ballentine*, 738 F2d 1244.

ROY'S HANDICAP DISCRIMINATION CLAIM SHOULD ALSO BE DISMISSED

It is well established that a Title VII plaintiff must exhaust the available administrative remedies as a condition to bringing a civil action. *Brown v. General Services Administration*, 425 U.S. 820, 832 (1976); *Haithcock v.*

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[2] The January 1994 MSPB order denied Roy's petition for review of the September 1993 initial decision, making the initial decision final.

Frank, 958 F2d 671, 675 (6th Cir. 1992). Likewise, a handicapped person must exhaust all administrative remedies as a condition to seeking redress in federal court under the Rehabilitation Act. *Haithcock*, 958 F2d 675. If a plaintiff has not first presented a claim to the appropriate administrative agency, that claim may not be brought before the federal court. *See* id. The requirement that a plaintiff exhaust the administrative remedies prior to instituting suit ensures that the administrative agency will be afforded the opportunity to attempt conciliation and voluntary settlement, the preferred means for resolving employment discrimination suits. Id.

Federal employees may pursue their allegations of discrimination either through the Equal Employment Opportunity Commission (EEOC) or the MSPB, but not both. 29 C.F.R. §1613.403(1993); 5 C.F.R. §1201.151 (1994). The employee has thirty days from the date of the alleged discriminatory event to file a complaint with the EEOC. 29 C.F.R. §1613.214(a)(1993). The employee has twenty days from the date of the agency action complained of to file an appeal with the MSPB. 5 C.F.R. §1201.154 (1994).

Defendants submitted the uncontroverted affidavit of Henry Valines, Senior EEO Complaints Processing Specialist for Cincinnati, Ohio, that Roy initiated no EEO process regarding her April 1991 removal. (Doc.7, Ex.11). Roy contends that the EEOC "refused" to accept her complaint in February 1994. Assuming, *arguendo*, that Roy's allegation is true, it is not determinative because to be timely, Roy's EEOC filing had to be made within thirty days after April 20, 1991. *See* 5 C.F.R. §1201.154 (1994). Roy also references a June 1989 EEOC complaint, which she alleges was "refused" by the EEOC. (Doc.9, p.5[3]). Assuming, *arguendo*, that Roy's allegation is true, it is not determinative because a 1989 EEOC complaint could not have been made regarding her 1991

[3] The pages of Roy's response are not consecutively numbered; we are referring to physical page 5 of her pleading.

discharge. *See* id. Furthermore, the alleged timeliness of Roy's February 1994 filing with this Court is not relevant to the timeliness of the required EEOC or MSPB filings.

Thus, we find that Roy did not timely initiate the proper administrative process prior to the filing of her discrimination claim. *See Haithcock*, 958 F2d at 675. Since Roy failed to exhaust the available administrative remedies, her handicap discrimination claim should be dismissed. *See* id.

In view of the above, it is not necessary for us to address Defendants' contention that Roy's complaint should be dismissed for failing to name the proper defendant.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Filed
Kenneth J. Murphy
Dec 5 10:57AM '94

Gayle A. Roy,
Plaintiff,

vs.

Case No. C-1-94-088

United States Postal Service, et al.,
Defendants

NOTICE

Attached hereto is the Amended Report and Recommended Decision of the Honorable Robert A. Steinberg, United States Magistrate Judge, which was filed on 5 December 1994. Any party may object to the Magistrate Judge's findings, recommendations and report within ten (10) days after being served with a copy thereof or further appeal is waived. *See United States v. Walters*, 638 F2d 947 (6th Cir. 1981). Such parties shall file with the Clerk of Court, and serve on all parties, the Judge and the Magistrate Judge, a written Motion to Review which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made, along with a memorandum of law setting forth the basis for such objection. (Such parties shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which an objection is made).

In the event a party files a Motion to Review the Magistrate Judge's Findings, Recommendations and Report, all other parties shall respond to said Motion to Review within ten (10) days after being served a copy thereof.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Filed
Kenneth J. Murphy
Clerk
Dec 5 10:57AM '94

Gayle A. Roy,
Plaintiff

vs

Case No. C-1-94-088

United States Postal Service, et al.,
Defendants

AMENDED REPORT AND RECOMMENDATION

This matter is before the Court on a remand order (Doc.14) and Plaintiff Gayle A. Roy's motion to review report and recommendation (Doc.13). Plaintiff has also filed a supplemental affidavit to her motion to review. (Doc.15). Defendants have not filed a responsive memorandum.

Defendant discharged Roy in April 1991 for unacceptable conduct regarding a March 1991 felony conviction. Roy filed a grievance, which was decided against her on July 28, 1993. On August 16, 1993, Roy filed an appeal with the Merit Systems Protection Board (MSPB). She also contended she was a victim of handicap discrimination. In a September 13, 1993 Initial Decision, the MSPB dismissed Roy's appeal as untimely, because it was not filed within twenty days of the effective date of the adverse employment action. The MSPB did not address the merits of Roy's claims. The Initial Decision was finalized by the MSPB's January 12, 1994 Order. On February 7, Roy filed a complaint with this Court. She filed an amended complaint on April 7, 1994.

In her amended complaint, Roy requests judicial review of the January 12, 1994 MSPB Order. She also raises a handicap discrimination claim. On September 27, 1994, this Court filed its Report and Recommendation recommending dismissal of Roy's complaint. (Doc.12). With regard to Roy's request for judicial review of the January 1994 MSPB Order,

we recommended a finding that subject matter jurisdiction over the threshold issue of the timeliness of Roy's August 1993 MSPB appeal rests with the Federal Circuit. (Doc.12, pp.4-5). We also recommended dismissal of Roy's handicap discrimination claim because she did not timely initiate the proper administrative process, either through the Equal Employment Opportunity Commission (EEOC) or the MSPB, prior to the filing of her discrimination claim. (Doc.12, pp.5-6) We did not reach the merits of her claim.

The newly discovered evidence that we are asked to consider on remand is an August 16, 1994 letter to Roy from the United States Department of Labor, Office of Workers' Compensation Programs, which reads as follows: Let this letter serve as verification that the charges for the arthroscopic surgery from the 1993 left knee surgery will be paid from this office. (Doc.11, Ex.A; Doc.13, Ex.1)[1].

Roy contends this letter supports her position that she presently has a disabling job-related injury and that this injury has existed since November 1985. (Doc.13, p.2). She also contends that the MSPB would have decided the case differently had it known this information at the time of its September 1993 Initial Decision.

Roy's contentions are without merit. The August 1994 letter was not in existence at the time of the either MSPB's September 1993 Initial Decision or January 1994 Order. Assuming, *arguendo*, that the August 1994 letter does support Roy's contention that she was disabled in November 1985, it does not relate to the issue decided in the MSPB's September 1993 Initial Decision or the Court's September 1994 Report and Recommendation, namely, that Roy's August 1993 MSPB appeal was not timely filed.

Thus, we find no basis to amend the September 1994

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[1] Although this letter was first filed with the Clerk's Office on Friday, September 23, 1994, the Court was not advised or aware of the filing when it filed the Report and Recommendation on Tuesday, September 27, 1994.

Report and Recommendation regarding Roy's newly discovered evidence.

In addition to the issue of newly discovered evidence, Roy's motion to review raises other issues, the majority of which relate to the merits of her claim that she was wrongfully discharged. These other issues are not properly before this Court because it is the District Judge in the first instance who addresses issues raised in a motion to review a Report and Recommendation. Furthermore, as stated earlier, neither the September 1994 Report and Recommendation nor the MSPB Order from which Roy appeals reached the merits of her claims.

For several reasons, however, it is appropriate to address Roy's contention that as a preference eligible employee, she is entitled to dispute her removal both via a MSPB appeal and a negotiated grievance procedure. Roy briefly touched on this argument on page four of an attachment to her response (Doc.9) to Defendant's motion. She as expanded her position somewhat in her motion to review. (Doc.13, p.5). Also, this contention arguably relates to the timeliness of her April 1993 MSPB appeal, which was the subject of the September 1994 Report and Recommendation.

Roy contends that her August 1993 MSPB appeal was timely because it was filed within twenty days of the July 1993 arbitration decision. In support of her contention, Roy cites to 5 U.S.C. §7121 and to *Jones v. Department of the Navy*, 898 F2d 133 (Fed. Cir. 1990). (Doc.13, p.5).

5 U.S.C. §7121(d), which applies to mixed cases, states that an aggrieved employee "may raise the matter under a statutory procedure or the negotiated procedure, but not both." The statute further states: Selection of the negotiated procedure in no manner prejudices the right of the aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7710 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal

Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination . . .

Roy contends that a reasonable interpretation of the statute is that you cannot do both things at the same time because that would overburden the system. (Doc.13, p.5). In *Jones*, the Federal Circuit held that in cases involving discrimination claims, an aggrieved employee who has contested an agency action through arbitration proceedings has an absolute right to request the MSPB to review the arbitrator's decision. 898 F2d at 134-135. *See also* 5 C.F.R. §1201.154(d); *American Federation of Government Employees*, Local 2052 *v. Reno*, 992 F2d 331,334-335 (D.C. Cir. 1993).

Citing *Bacashihua v. Merit Systems Protection Board*, 811 F2d 1498, 1502 (Fed. Cir. 1987) and two other Federal Circuit cases, Defendants contend that 5 U.S.C. §7121 and its implementing regulation are not applicable to the postal service, therefore that postal service employees may not directly appeal arbitration decisions to the MSPB. (Doc.7, p.9.n.9). Neither *Jones* nor *Local* 2052 involved postal service employees.

Citing *Lewis v. United States Postal Service*, 47 M.S.P.R. 228 (1991) and *Shrider v. United States Postal Service*, 26 M.S.P.R. 238 (1985), the administrative law judge found in her September 1993 MSPB Initial Decision that pursuit of a grievance does not provide good cause for waiver of the MSPB's twenty day time limit for the filing of an appeal.

Regardless of the appropriate legal analysis, the issue is whether Roy's August 1993 MSPB appeal was timely. Subject matter jurisdiction over Roy's request for judicial review of this threshold issue rests with the Federal Circuit, and not with this Court. *See* Doc.12, pp. 4-5, *citing Ballentine v. Merit System Protection Board*, 738 F2d 1244 (Fed. Cir. 1984). This results in a unified body of caselaw on procedural or threshold issues, not related to the merits of discrimination

claims, to be decided by the Federal Circuit. Id. Roy has not distinguished *Ballentine* or otherwise shown why *Ballentine* should not apply in this case.

Therefore, we continue to recommend that this Court has no subject matter jurisdiction over Roy's request for judicial review of the January 1994 MSPB Order.

We now turn to Roy's handicap discrimination claim. Because her complaint included a discrimination claim, Roy filed her complaint in this Court. *See* 5 U.S.C. §7703(b). Prior to initiating a discrimination action in court, federal employees must pursue their allegations either through the EEOC or the MSPB. (Doc. 12, p.6.). Thus, whether Roy exhausted her administrative remedies prior to the filing of her administrative claim depends, at least in part, on the timeliness of Roy's August 1993 MSPB appeal. Because a threshold jurisdictional issue exists, subject matter jurisdiction lies with the Federal Circuit. Pursuant to 28 U.S.C. §1631, whenever a civil action is filed in a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action to any other court in which the action could have originally been brought. Thus, rather than dismissing Roy's complaint, as was recommended in the September 1994 Report and Recommendation, it would be more appropriate to transfer this action to the Federal Circuit. *See* 28 U.S.C. §1631. If the Federal Circuit finds that Roy's August 1993 MSPB appeal was timely, then the matter will presumably be remanded to the MSPB to consider the merits of Roy's claims. *See Wall v. United States*, 871 F2d 1540, 1543 (10th Cir. 1989).

IT IS THEREFORE RECOMMENDED THAT:

This case be TRANSFERRED to the Federal Circuit to determine the timeliness of Roy's 1993 MSPB appeal and to determine whether she exhausted her administrative remedies with regard to her handicap discrimination claim.

Date: 12-2-94 s/_____

Robert A. Steinberg, US Magistrate Judge

CINCINNATI SPORTSMEDICINE AND ORTHOPAEDIC CENTER

Date: 7/11/95

Location: One Lytle Place, Cincinnati, Ohio 45202

Patient name: GAYLE ROY

Ms. Roy comes back in today for follow-up on the left knee problem. She is diagnosed as having left saphenous neuritis and left patellofemoral arthrosis on that side. Her problems all commenced November 28, 1985 when had an injury to her left knee. Since that time she has had symptoms of saphenous nerve reflex syspathetic dystrophy (RSD). She has received treatment for that medically to this point. She has also had patellofemoral arthrosis treated by surgery. She underwent arthroscopy of her left knee 11/3/93.

Today she comes back in with an interest in transferring her care from Dr. Noyes to Dr. Broadnax. This is being done at the request of the Department of Labor. She also requests a very specific statement as to what her prognosis, specific injury, and ailment are.

PHYSICAL EXAMINATION today reveals a left knee that has no effusion. She has full flexion of that knee. She does have some mild lateral joint line tenderness. Otherwise, her tenderness is to palpation along the pes anserinus tendon. She does have saphenous impingement type symptoms with pressure in the posteromedial aspect of her left knee. Examination of her calves reveal hypersensitivity along the saphenous distribution starting approximately 2 to 3 cm. below the joint line and extending distally. Examination of the patellofemoral joint reveals moderate crepitance in it. There is only mild pain to patellar compression.

IMPRESSION:

Left saphenous neuritis with possible entrapment symptoms and/or sympathetically maintained syndrome. All these are symptoms referable back to her original injury in 1985.

She is currently under the care of Dr. Broadnax and, in fact, we believe this is the appropriate place for her to continue getting her regular care. We believe this because, right now, her saphenous neuritis is her major complaint. We also feel, at the present time, the patellofemooral arthrosis has had all possible treatment orthopaedically performed. Furthermore, with her saphenous neuritis, though it is not full at this time, we do not wish to inflame it or exacerbate those symptoms at all by proceeding with left knee procedures.

Given the situation, we would like to transfer her care to Dr. Broadnax. We also would like her to re-start her patellofemoral exercise program when she is cleared for that by Dr. Broadnax.

We would like to see her in consultation.

CARL W. NISSEN, M.D.
CLINICAL ASSOCIATE

FRANK R. NOYES, M.D.

wby
R: 7/12
T: 7/14